

Attachment A – Part 4

<p style="text-align: right;">Page 154</p> <p>1 States?</p> <p>2 MS. AMRON: Objection as to</p> <p>3 relevance and to -- my standing</p> <p>4 objection to the use of that document,</p> <p>5 questions of the document.</p> <p>6 A. Probably a day and a half</p> <p>7 to two days.</p> <p>8 Q. Somewhere on the order of,</p> <p>9 say, 8 to 16 hours?</p> <p>10 MS. AMRON: Objection. Same</p> <p>11 objections.</p> <p>12 A. Yes.</p> <p>13 Q. And with respect to</p> <p>14 Ms. Guterrez, approximately how much</p> <p>15 time did she take to assemble the</p> <p>16 information and assist you in providing</p> <p>17 counsel with information requested for</p> <p>18 inclusion in Exhibit 8?</p> <p>19 MS. AMRON: Objection as to</p> <p>20 relevance, to the questions about that</p> <p>21 document, and mischaracterizes the</p> <p>22 witness' testimony.</p> <p>23 A. It's a bit of a guess, but</p> <p>24 I would say about the same amount of</p>	<p style="text-align: right;">Page 156</p> <p>1 today that you could not in any way rely</p> <p>2 upon any of the work that you and</p> <p>3 Ms. Guterrez had previously done?</p> <p>4 A. Yes, I was.</p> <p>5 Q. And with respect to the</p> <p>6 work that you did with Ms. Guterrez, did</p> <p>7 you have materials with you when you</p> <p>8 traveled from London to New York</p> <p>9 relative to the ranking of Exxon and</p> <p>10 Mobil that you reviewed in transit?</p> <p>11 MS. AMRON: Objection as to</p> <p>12 relevance.</p> <p>13 A. I had them -- that material</p> <p>14 on my computer. I did not review it,</p> <p>15 actually.</p> <p>16 Q. You had it on your computer</p> <p>17 and assembled it and forwarded it to</p> <p>18 counsel previously; is that a fair</p> <p>19 statement?</p> <p>20 MS. AMRON: Objection as to</p> <p>21 relevance.</p> <p>22 A. That is correct.</p> <p>23 Q. And the information on your</p> <p>24 computer included the table that you</p>
<p style="text-align: right;">Page 155</p> <p>1 time.</p> <p>2 Q. Ms. Guterrez spent</p> <p>3 approximately 8 to 16 hours apart from</p> <p>4 the work that you spent to assemble this</p> <p>5 information?</p> <p>6 MS. AMRON: Objection as to</p> <p>7 relevance and to the questions about the</p> <p>8 document.</p> <p>9 A. That's correct.</p> <p>10 Q. And with regard to the</p> <p>11 meetings that you attended today, what</p> <p>12 did you discuss with counsel relative to</p> <p>13 the testimony that you would offer</p> <p>14 relative to Exxon Mobil's refining</p> <p>15 capacity in the period 1985 to 2003?</p> <p>16 MS. AMRON: Objection on the</p> <p>17 grounds of privilege. I'm not directing</p> <p>18 the witness not to answer.</p> <p>19 A. Basically with regard to</p> <p>20 Exxon Mobil capacity market share to</p> <p>21 give my review based on my experience in</p> <p>22 working with the industry.</p> <p>23 Q. And were you instructed in</p> <p>24 the course of the meetings that you had</p>	<p style="text-align: right;">Page 157</p> <p>1 prepared ranking Exxon Mobil in terms of</p> <p>2 its refining capacity; am I correct?</p> <p>3 MS. AMRON: Objection as to</p> <p>4 relevance and to the use of questions</p> <p>5 about the document.</p> <p>6 A. That's correct.</p> <p>7 Q. You also had on your</p> <p>8 computer information that you had</p> <p>9 assembled about ranking Exxon Mobil in</p> <p>10 terms of its refining capacity; am I</p> <p>11 correct?</p> <p>12 MS. AMRON: Objection as to</p> <p>13 relevance and to questions about the</p> <p>14 document.</p> <p>15 A. That's correct.</p> <p>16 Q. You also had information</p> <p>17 relative to ranking Exxon Mobil in terms</p> <p>18 of its retail market share nationwide</p> <p>19 for gasoline sales?</p> <p>20 MS. AMRON: Objection as to</p> <p>21 relevance and to questions about</p> <p>22 Exhibit 8.</p> <p>23 A. That's correct.</p> <p>24 Q. Did you also have</p>

40 (Pages 154 to 157)

<p style="text-align: right;">Page 158</p> <p>1 information on your computer relative to 2 the distribution of gasoline from the 3 Torrance refinery to terminals in 4 southern California? 5 MS. AMRON: Objection as to 6 relevance and also vagueness as to 7 information. 8 A. No, I don't believe I do 9 have information on that. I don't 10 really have direct -- as I mentioned 11 earlier, I really don't have direct 12 information of where gasoline goes 13 directly from the Torrance refinery. 14 Q. And with regard to Exxon's 15 Benicia refinery, do you have any 16 information based on your experience in 17 the industry that would link refining of 18 product at Exxon's Benicia refinery to 19 releases of gasoline in California that 20 have contaminated public water supply 21 wells? 22 MS. AMRON: Objection as 23 going beyond the scope of direct. 24 A. Based on my experience?</p>	<p style="text-align: right;">Page 160</p> <p>1 A. No. As I said, that 2 gasoline commingled in that system. To 3 the extent it was supplied to locations 4 that had leaks, then Benicia-produced 5 MTBE gasoline over time would have 6 gotten into those leaks. 7 I have not reviewed or 8 assessed specific locations for where 9 leaks have occurred. 10 Q. In the course of doing work 11 for counsel, were you ever asked to 12 trace the movement of product on the 13 northern California Kinder Morgan 14 system? 15 A. I was asked on -- I was 16 asked to understand how gasoline is 17 distributed in the California market. 18 So to the extent that that includes that 19 system, yes. 20 Q. Were you asked, though, to 21 specifically trace batches of gasoline 22 moving on the northern California Kinder 23 Morgan system? 24 MS. AMRON: Objection on the</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Yes. 2 A. Only to the extent that 3 Benicia supplied MTBE gasoline into the 4 common carrier pipeline system, northern 5 California, on a commingled basis. And 6 similar to how I had testified on the 7 East Coast with the commingling, that 8 supplies in this case from Benicia would 9 be spread throughout that system. To 10 the extent there were leaks that were 11 supplied by that system, I would say 12 that it is my opinion that it's 13 reasonable to assume that some gasoline 14 produced by Benicia got into those 15 service stations and into those leaks. 16 Q. And can you identify for us 17 any specific release from a service 18 station in northern California supplied 19 by that system which you believe had an 20 impact on a public water supply well 21 resulting in a well being closed or 22 having to be treated? 23 MS. AMRON: Objection as 24 beyond the scope of direct.</p>	<p style="text-align: right;">Page 161</p> <p>1 grounds of privilege. 2 A. No, I was not. 3 Q. With regard to the southern 4 California Kinder Morgan system, were 5 you ever asked to trace batches of 6 gasoline moving on that system? 7 MS. AMRON: Objection on the 8 ground of privilege. 9 A. No, I was not. 10 Q. With regard to the meeting 11 that you had with counsel, what were you 12 told relative to the ranking of Exxon 13 for the retail sales of gasoline 14 nationwide? 15 MS. AMRON: Objection on the 16 ground of privilege. 17 A. I was told to present my 18 view on what that ranking was, again, 19 based on my experience in the industry. 20 Q. With regard to national 21 rank for petroleum sales including 22 gasoline, can you tell us based on your 23 general knowledge what the rank of Shell 24 is?</p>

<p style="text-align: right;">Page 162</p> <p>1 MS. AMRON: Objection. I 2 think vague and ambiguous, 3 mischaracterizes his previous testimony. 4 Q. I will rephrase the 5 question. Based on your general 6 experience and knowledge of the 7 industry, can you tell us on a national 8 basis what the market share is for Shell 9 and its sales of gasoline? 10 A. Over what period of time? 11 Q. 1985 to 2003? 12 A. I would rank them in -- 13 typically in probably the top five. You 14 know, they were a major marketer. 15 Q. And with regard to BP Amoco 16 and its market share percentage for 17 sales of gasoline in the United States, 18 how would you rank them, 1985 to 2003? 19 A. Top 10. 20 Q. With respect to Conoco 21 Phillips, during the period from 1985 to 22 2003, what rank would you give them in 23 terms of percentage of market share for 24 retail sales of gasoline?</p>	<p style="text-align: right;">Page 164</p> <p>1 gasoline sales in the United States, 2 1985 to 2003? 3 A. Well, Exxon and Mobil. I 4 would say Chevron, Shell, maybe BP 5 Amoco. 6 Q. Any others that you would 7 include as possible candidates for being 8 in the top five for percentage of retail 9 sales of gasoline, 1985 to 2003? 10 A. I'd say that's -- what I've 11 given you is a reasonable estimate. All 12 of those were major retailers during 13 that time period. 14 Q. In the course of your 15 meeting with counsel today, what else 16 were you told about your testimony on 17 direct relative to the subjects that you 18 would be testifying to today? 19 MS. AMRON: Objection on the 20 ground of privilege. 21 A. Not really much more. I 22 was told to, again, rely on my 23 experience and that I was not able to 24 use the analysis that's shown in</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Well, if we're talking 2 about presumably Conoco Phillips and all 3 of the companies that they have acquired 4 over that time so that the same way we 5 looked at Exxon Mobil, right; is that 6 correct? 7 Q. Yes, sir. 8 A. It is a little more 9 difficult because they acquired a lot of 10 firms. 11 But I would rank them, 12 again, in the top ten. 13 Q. With regard to Sunoco, how 14 would you rank Sunoco's share of the 15 retail market on a nationwide basis for 16 the years 1985 to 2003? 17 A. I would put them probably 18 the lower end of the top ten, maybe a 19 little below the top ten on occasion. 20 Q. With regard to the top five 21 based on your experience in the 22 industry, what companies would you 23 identify as being in the top five for 24 percentage of retail market share for</p>	<p style="text-align: right;">Page 165</p> <p>1 Exhibit 8. So I think, as I recall, 2 that's basically it. 3 Q. And what efforts did you 4 undertake before appearing to testify 5 here today to in any way expunge your 6 knowledge of the work that was done in 7 preparing Exhibit No. 8 from your 8 general experience and background so you 9 could testify otherwise on the topics 10 you were going to be asked about in your 11 direct? 12 MS. AMRON: Objection on the 13 grounds that it mischaracterizes the 14 witness' testimony and is argumentative. 15 MR. STACK: I certainly 16 would dispute it is argumentative. 17 BY MR. STACK: 18 Q. Let me rephrase the 19 question. Mr. Burke, what did you do in 20 appearing to testify here today to 21 expunge, remove everything you learned 22 from your experience in assembling the 23 information with your colleague to 24 assist counsel in putting together</p>

<p style="text-align: right;">Page 166</p> <p>1 Exhibit No. 8?</p> <p>2 MS. AMRON: And I will</p> <p>3 object that it mischaracterizes the</p> <p>4 witness' testimony.</p> <p>5 A. Well, I guess it is a</p> <p>6 little hard to expunge things. But I</p> <p>7 reviewed in my mind the -- my experience</p> <p>8 in these areas in terms of, you know,</p> <p>9 over the course of this time period,</p> <p>10 what I have done in terms of working</p> <p>11 with the industry, you know. Over this</p> <p>12 time period Exxon Mobil repeatedly, as</p> <p>13 I've checked it through the years, has</p> <p>14 always ranked at the top in both</p> <p>15 refining capacity and retail market</p> <p>16 share. So, I mean, it wasn't too hard.</p> <p>17 The tables in Exhibit 8 largely</p> <p>18 confirmed what I had already known. It</p> <p>19 just put some numbers behind it.</p> <p>20 Q. And with regard to the</p> <p>21 information that's in Exhibit No. 8 in</p> <p>22 the tables, those materials were</p> <p>23 assembled within the last two to three</p> <p>24 weeks?</p>	<p style="text-align: right;">Page 168</p> <p>1 back.</p> <p>2 Q. Did you stay in New York</p> <p>3 last night?</p> <p>4 A. No.</p> <p>5 Q. Pardon me?</p> <p>6 A. No, I did not.</p> <p>7 Q. Okay. And with regard to</p> <p>8 your transit from -- you did travel from</p> <p>9 London-New York; am I correct?</p> <p>10 A. That's correct.</p> <p>11 Q. With regard to the transit,</p> <p>12 were you paid for travel time to appear</p> <p>13 here today?</p> <p>14 A. No.</p> <p>15 Q. But you are being</p> <p>16 compensated for the time that you spent</p> <p>17 to prepare for and appear at your</p> <p>18 deposition here today?</p> <p>19 A. Yes, I am.</p> <p>20 Q. And at what rate are you</p> <p>21 being compensated?</p> <p>22 A. I believe it is \$460 an</p> <p>23 hour.</p> <p>24 MR. STACK: I have no</p>
<p style="text-align: right;">Page 167</p> <p>1 MS. AMRON: Objection on the</p> <p>2 grounds of relevance and repeat my</p> <p>3 standing objection to questions about</p> <p>4 Exhibit 8?</p> <p>5 A. Yes, they were.</p> <p>6 Q. With respect to your</p> <p>7 appearance here today, are you being</p> <p>8 compensated for your time?</p> <p>9 A. Yes, I am.</p> <p>10 Q. Were you compensated for</p> <p>11 your travel expenses to appear in New</p> <p>12 York while en route to China?</p> <p>13 MS. AMRON: Objection,</p> <p>14 mischaracterizes his testimony.</p> <p>15 A. I have not been en route to</p> <p>16 China. Sorry.</p> <p>17 Q. Are you going to China next</p> <p>18 week?</p> <p>19 A. I am.</p> <p>20 Q. And did you fly in from</p> <p>21 London to appear here today?</p> <p>22 A. Yes. Well, no, no, no.</p> <p>23 Well, I was coming back anyway so I was</p> <p>24 not compensated by counsel for flying</p>	<p style="text-align: right;">Page 169</p> <p>1 further questions.</p> <p>2 MS. AMRON: I do. Just a</p> <p>3 few questions.</p> <p>4 REDIRECT EXAMINATION</p> <p>5 BY MS. AMRON:</p> <p>6 Q. Referring to Exhibit 8</p> <p>7 which you have in front of you,</p> <p>8 Mr. Burke, have you ever seen that</p> <p>9 document before counsel handed it to you</p> <p>10 today?</p> <p>11 A. No, I have not.</p> <p>12 Q. I don't have a copy of it.</p> <p>13 It is a document called a stipulation.</p> <p>14 Do you have an understanding -- before</p> <p>15 counsel explained it to you today, did</p> <p>16 you have an understanding of what a</p> <p>17 stipulation is?</p> <p>18 A. Unfortunately, no. I'm not</p> <p>19 a lawyer. So I did not.</p> <p>20 Q. Was your direct testimony</p> <p>21 today based on the information that you</p> <p>22 gained and knowledge that you have</p> <p>23 gained during your 30 years of</p> <p>24 experience in your current position?</p>

<p style="text-align: right;">Page 170</p> <p>1 A. Yes.</p> <p>2 MR. STACK: Objection.</p> <p>3 THE WITNESS: Yes, it was</p> <p>4 based on that.</p> <p>5 BY MS. AMRON:</p> <p>6 Q. Did you review documents in</p> <p>7 preparation for preparing -- in</p> <p>8 preparation for testimony today?</p> <p>9 MR. STACK: Objection.</p> <p>10 A. Well, I -- as I've stated,</p> <p>11 I reviewed these documents which we've</p> <p>12 talked about, the National Petroleum</p> <p>13 News, the Oil and Gas Journal, and a</p> <p>14 list of terminals from the OPIS terminal</p> <p>15 directory listing. So I have reviewed</p> <p>16 some documents, yes.</p> <p>17 Q. Did you review those</p> <p>18 documents that you've just mentioned to</p> <p>19 prepare for your testimony today or</p> <p>20 for -- to put together the charts in</p> <p>21 Exhibit 8?</p> <p>22 MR. STACK: Objection.</p> <p>23 A. It was put together, the</p> <p>24 charts.</p>	<p style="text-align: right;">Page 172</p> <p>1 A. Yes.</p> <p>2 Q. And you answered that you</p> <p>3 had not worked for the various pipeline</p> <p>4 systems that he mentioned to you?</p> <p>5 A. That's correct.</p> <p>6 Q. If you didn't work for</p> <p>7 those systems, how is it that you are</p> <p>8 familiar with common carrier pipelines</p> <p>9 in the United States?</p> <p>10 MR. STACK: Objection.</p> <p>11 A. Well, I'm familiar from the</p> <p>12 point of view of their relationship to</p> <p>13 refining and moving product to market.</p> <p>14 So typically my engagements have been</p> <p>15 with refiners themselves or preparing</p> <p>16 analyses for the, in this case, the</p> <p>17 overall U.S. market or regional parts of</p> <p>18 the U.S. market. And to do that, you</p> <p>19 need to have a knowledge of how</p> <p>20 pipelines work, common carrier pipelines</p> <p>21 work and the big systems. But in</p> <p>22 general, you know, I have not worked</p> <p>23 directly for pipeline systems.</p> <p>24 Q. You were also asked a</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Did you review any</p> <p>2 documents specifically in preparation</p> <p>3 just for your testimony today?</p> <p>4 MR. STACK: Objection.</p> <p>5 A. No. I've relied on my</p> <p>6 experience over time.</p> <p>7 Q. Did you do any research</p> <p>8 specifically for your -- in preparing</p> <p>9 for your testimony today?</p> <p>10 MR. STACK: Objection.</p> <p>11 A. I really did not. I was</p> <p>12 told to rely on my knowledge that I've</p> <p>13 gained over 30 years. I have mentioned</p> <p>14 a number of specific engagements that</p> <p>15 were relevant to how gasoline is</p> <p>16 distributed, transported in California,</p> <p>17 so I reviewed those really for memory.</p> <p>18 I did not dig up the original reports or</p> <p>19 analyses.</p> <p>20 Q. Now, you were asked by</p> <p>21 Mr. Stack fairly early in his</p> <p>22 questioning of you a series of questions</p> <p>23 about working for individual pipelines.</p> <p>24 Do you recall that series of questions?</p>	<p style="text-align: right;">Page 173</p> <p>1 series of questions about refining</p> <p>2 capacity, and you referred in your</p> <p>3 answer to the Oil and Gas Journal; is</p> <p>4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Is the Oil and Gas Journal</p> <p>7 a document that you -- or journal that</p> <p>8 you receive and rely on in the ordinary</p> <p>9 course of your work?</p> <p>10 MR. STACK: Objection.</p> <p>11 A. Yeah, it's --</p> <p>12 MR. STACK: A legal</p> <p>13 conclusion.</p> <p>14 Q. You may answer the</p> <p>15 question.</p> <p>16 A. The Oil and Gas Journal is</p> <p>17 a weekly journal which is an industry</p> <p>18 standard. You know, I have been</p> <p>19 reviewing that, I think, for the past 30</p> <p>20 years. It is basically -- provides news</p> <p>21 and in some cases data for the industry.</p> <p>22 Q. And is that the type of</p> <p>23 information that you rely on in</p> <p>24 providing services to your clients?</p>

44 (Pages 170 to 173)

<p style="text-align: right;">Page 174</p> <p>1 MR. STACK: Objection. 2 A. Well, it is one source, 3 yeah. 4 Q. And you also have referred 5 to the National Petroleum News. Is that 6 also a source of information that you 7 generally rely on in the course of your 8 work? 9 A. Yes. Yes. 10 Q. And is it information that 11 you receive and gather in the normal 12 course of your work? 13 A. We subscribe to the -- 14 MR. STACK: Objection. 15 THE WITNESS: We subscribe 16 to the publication. We maintain it 17 going back a fair number of years. 18 As I mentioned, it doesn't 19 go all the way back to '85, 20 unfortunately, due to shelf space. 21 Q. And I think when you said 22 it didn't go back all the way to '85, 23 you referred to a summary of the 24 information from API; correct?</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. STACK: Nothing 2 further. Thank you, Mr. Burke. Travel 3 safely. 4 THE WITNESS: Thank you. 5 THE VIDEOGRAPHER: We're 6 going off the record. The time is 7 5:29 p.m. This is the end of tape 3 of 8 the deposition of Bruce F. Burke. 9 (Witness excused.) 10 (Whereupon the examination 11 adjourned at 5:29 p.m.) 12 ----- 13 14 15 16 17 18 19 20 CERTIFICATE 21 I hereby certify that the 22 proceedings and evidence noted are 23 contained fully and accurately in the 24 notes taken by me in the deposition of</p>
<p style="text-align: right;">Page 175</p> <p>1 A. This API Basic Data Book 2 covers data going back in series in some 3 cases back to 1960. 4 Q. And can you just remind the 5 jury what API stands for? 6 A. Yeah. It is the American 7 Petroleum Institute. It is an industry 8 association which essentially all of the 9 industry, you know, major refiners, 10 belong to. 11 Q. And is the information that 12 you receive from API, is that the kind 13 of information that you typically rely 14 on in the course of your work? 15 MR. STACK: Objection. 16 A. Yes. 17 Q. And is it information that 18 you gather in the normal course of 19 business? 20 MR. STACK: Objection. 21 A. It is one source, 22 absolutely. 23 MS. AMRON: I have no 24 further questions.</p>	<p style="text-align: right;">Page 177</p> <p>1 the above matter, and that this is a 2 correct transcript of the same. 3 4 5 6 7 <u>Ann Kaufmann, RPR, CRR</u> 8 9 10 11 (The foregoing certification 12 of this transcript does not apply to any 13 reproduction of the same by any means, 14 unless under the direct control and/or 15 supervision of the certifying reporter.) 16 17 18 19 20 21 22 23 24</p>

45 (Pages 174 to 177)